

# Exhibit 3

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Attorneys for Plaintiff/Counter-Defendant

7 ARIZONA SUPERIOR COURT  
8 PINAL COUNTY  
9

10 THE PARSONS CO., INC., an Arizona  
11 corporation,

12 Plaintiff,

13 vs.

14 AWD RANCH, LLC, an Arizona limited  
liability company; R. W. WALKER and EVE  
15 F. WALKER, husband and wife; DESERT  
PLANTS CONSERVANCY, LLC, an  
16 Arizona limited liability company; AWD  
FARMS, LLC, an Arizona limited liability  
17 company,

18 Defendants.

19 AWD RANCH, LLC, an Arizona limited  
liability company; DESERT PLANTS  
20 CONSERVANCY, LLC, an Arizona limited  
liability company,

21 Counter-Claimants,

22 vs.  
23

24 THE PARSONS CO., INC., an Arizona  
corporation,

25 Counter-Defendant.  
26

NO. CVC 2004 01368

**SECOND AMENDED  
COMPLAINT**

(Hon. Robert Carter Olson)

1 AWD RANCH, LLC, an Arizona limited  
2 liability company; R. W. WALKER and EVE  
3 F. WALKER, husband and wife; DESERT  
4 PLANTS CONSERVANCY, LLC, an  
5 Arizona limited liability company,

6 Cross-Claimants,

7 vs.

8 R. W WALKER and EVE F. WALKER,  
9 husband and wife,

10 Cross-Defendants.

11 R. W WALKER and EVE F. WALKER,  
12 husband and wife,

13 Third-Party Plaintiffs,

14 vs.

15 NILES LIPIN and JANE DOE LIPIN,  
16 husband and wife; MIMI PIERRON and  
17 JOHN DOE PIERRON, wife and husband;  
18 LORAIN KESSELRING and JOHN DOE  
19 KESSELRING, wife and husband; THE  
20 UNITED STATES OF AMERICA; JOHN  
21 DOES 1-10; JANE DOES 1-10; ABC  
22 CORPORATIONS 1-10; and XYZ  
23 ENTITIES 1-10; and their unknown heirs,  
24 devisees, successors and assigns,

25 Third-Party Defendants.

26 R. W WALKER and EVE F. WALKER,  
husband and wife,

Cross-Claimants,

vs.

AWD RANCH, LLC, an Arizona limited  
liability company; DESERT PLANTS  
CONSERVANCY, LLC, an Arizona limited  
liability company,

Cross-Defendants.

1        This amended Complaint comprises an updated set of claims against the only remaining  
2 defendants to the claims raised by Plaintiff Parsons Company, Inc. ("Parsons"), in the lawsuit,  
3 namely AWD RANCH, LLC, and DESERT PLANTS CONSERVANCY, LLC. All references  
4 to claims Parsons filed in the original complaint against the Walkers have been removed.  
5 Plaintiff, for its second-amended claim for relief, hereby amends its Complaint and alleges as  
6 follows. Plaintiff does not request that the Court reconsider its two prior rulings granting  
7 summary judgment in Defendants' favor on Counts I-III on the Purchase Agreement (a ruling  
8 with which Plaintiff still disagrees) or granting summary judgment in Plaintiff's favor on  
9 Counts II and III on the Deed of Easement.

10        1.        At all times material herein, the Plaintiff has owned property in Pinal County,  
11 Arizona, and resided in Marana, Pima County, Arizona.

12        2.        R.W. and Eve F. Walker ("Walkers") are and at all times material to this  
13 Complaint were married, acting on behalf of the marital community, and owned certain real  
14 property and property interests in Pinal County, Arizona.

15        3.        The Defendant AWD Ranch LLC ("AWD"), is an Arizona limited liability  
16 company.

17        4.        The Defendant Desert Plants Conservancy, L.L.C. ("Desert Plants"), is an Arizona  
18 limited liability company.

19        5.        The real property which is the subject matter of this complaint is located in Pinal  
20 County and consists of real property (the "Property," legally described in Exhibit A attached to  
21 the First Amended Complaint and incorporated herein) and an easement for ingress and egress  
22 to the Property (the "Easement," legally described in Exhibit B "Deed of Easement" and Exhibit  
23 C "Purchase and Sale Agreement" ("Sales Agreement") attached to the First Amended  
24 Complaint and incorporated herein).

25        6.        At one time, the Walkers owned all the real property which is the subject of this  
26 lawsuit, and no easement existed because none was necessary.

1           7.     On or about March 31, 1998, Plaintiff contracted in good faith with, and  
2 purchased for due and just consideration from, the Walkers, the Property (consisting of a 20-  
3 acre section with Stock Pond #3R-763.0 within this 20-acre section, specifically designed for  
4 the watering of cattle), leasehold rights to federal- and state-owned land, and interest in real  
5 property, consisting of the Easement, which served as the only ingress and egress to and from  
6 the Property for the movement of livestock (i.e, cattle), horses, ranching machinery and  
7 vehicles, and for general ranching activities of Plaintiff.

8           8.     The aforementioned Sales Agreement that governed these transactions was  
9 recorded in the Pinal County Recorder's Office on June 16, 1999, at Fee No. 1999-02743, and  
10 referenced the ingress and egress as to cattle "on all existing roads and trails ..." with associated  
11 grazing and water rights on the aforementioned Sections 20 and 30 (hereinafter "the Burdened  
12 Land").

13           9.     [Intentionally omitted.]

14           10.    On or about June 16, 2003, the Walkers sold the Burdened Land to Defendant(s)  
15 AWD and/or Desert Plants.

16           11.    Defendants AWD and Desert Plants claim the Easement did not allow for ingress  
17 and egress of cattle to move freely over the roads and trails of the property owned by these  
18 defendants that surrounds the Property, essentially Sections 20 and 30, and claim they were not  
19 aware of the Sales Agreement. At no time material to the complaint did Defendants AWD and  
20 Desert Plants adequately investigate their title or any clouds thereon.

21           12.    In or about November 2003, Defendants AWD and Desert Plants began to  
22 intentionally interfere with Plaintiff's Easement by illegally fencing off access to the Easement,  
23 obstructing the movement of Plaintiff's cattle and ranching equipment.

24           13.    Defendants AWD and Desert Plants have acted to restrict Plaintiff's rights that  
25 exist under the Deed of Easement and Sales Agreement. Defendants AWD and Desert Plants  
26 have thus rendered Plaintiff's land rights and interests useless.

1 **Count I**

2 **(Easement by Necessity and/or Implication)**

3 14.-19. [Paragraphs 14-19 omitted from this Second Amended Complaint.]

4  
5 **Count II**

6 **(Quiet Title)**

7 20. Plaintiff re-alleges all allegations contained in previous paragraphs, and  
8 incorporates them by reference.

9 21. Plaintiff, through its attorney and pursuant to A.R.S. § 12-1103, tendered two quit  
10 claim deeds to Defendants AWD and Desert Plants with two checks for five dollars (\$5.00)  
11 each. It has been more than twenty (20) days and Defendants have not executed and returned  
12 the quit claim deeds to Plaintiff or its attorneys.

13 22. The language and recording of the Deed of Easement and the Sales Agreement  
14 gave Defendants AWD and Desert Plants sufficient and effective notice of Plaintiff's rights  
15 under said documents.

16 23. Plaintiff has valid and legal rights under the Deed of Easement and Sales  
17 Agreement, and Defendants AWD's and Desert Plants' actions constitute a cloud on Plaintiff's  
18 interests. Said cloud on Plaintiff's interests has and will continue into the future to cause  
19 Plaintiff damages.

20  
21 **Count III**

22 **(Permanent Injunction)**

23 24. Plaintiff re-alleges all allegations contained in previous paragraphs, and  
24 incorporates them by reference.

25 25. Defendants AWD and/or Desert Plants have intentionally and illegally obstructed  
26 Plaintiff's Easement rights and usage.

26. The Court is empowered to issue an Order imposing an immediate and permanent injunction enjoining Defendants AWD and Desert Plants from further obstruction touching upon the Easement and Plaintiff's rights under the Deed of Easement and Sales Agreement. Plaintiffs are entitled to such an Order.

### Count IV

**(Breach of Contract)**

27.-30. [Paragraphs 27-30 omitted from this Second Amended Complaint.]

### Counts V and VI

**(Fraud and Fraud in the Inducement)**

31-43. [Paragraphs 31-43 omitted from this Second Amended Complaint.]

### Count VII

**(Wrongful Diversion and Unlawful Appropriation of Water)**

44. Plaintiff re-alleges all allegations contained in previous paragraphs, and incorporates them by reference.

45. Upon information, defendant AWD Farms, LLC, is an Arizona limited liability company doing business in Pinal County, Arizona. Collectively, Plaintiff refers to AWD Farms, LLC, AWD Ranch, LLC, and Desert Plants Conservancy, LLC, as the “AWD Defendants.”

46. Upon information and belief, AWD Farms, LLC, is under contract to operate a portion of the property owned by AWD and DPC.

47. In or about March 1998, Plaintiff purchased certified water rights from the Walkers allowing Plaintiff to collect a specified amount of surface water in the stock pond (the "Stock Pond") on the Property that they purchased from the Walkers. The Arizona

1 Department of Water Resources reissued the certificate of water rights to Plaintiff as  
2 certificate 1421.001.

3 48. The Stock Pond is certified with the Arizona Department of Water Resources.

4 49. Plaintiff has appropriated 1,095,000 gallons of water pursuant to its certified  
5 surface water right and is authorized to store that water in the Stock Pond.

6 50. Plaintiff's right to use the water it appropriated is better than and prior and  
7 superior to any right the AWD Defendants may have to the appropriated water.

8 51. Prior to June 2008, the AWD Defendants wrongfully altered an existing  
9 watercourse upstream from the Stock Pond.

10 52. The AWD Defendants' wrongful alteration to the watercourse caused and  
11 effected an appropriation of water from Plaintiff.

12 53. The AWD Defendants' appropriation of Plaintiff's water is unlawful.

13 54. The AWD Defendants' wrongful alterations of the watercourse caused a  
14 diminished water supply to flow into the Stock Pond, severely decreasing Plaintiff's use and  
15 enjoyment of the dominant estate and its rights to the lawfully appropriated water.

16 55. Plaintiff has been damaged by the AWD Defendants' wrongful alteration of  
17 the watercourse in an amount to be determined at trial.

18 56. The AWD Defendants acted with an evil mind and/or with reckless disregard  
19 of a substantial risk of significant economic harm to Parsons by wrongfully altering the  
20 watercourse and wrongfully appropriating Parsons' water, entitling Parsons to punitive  
21 damages.

22 57. The AWD Defendants are strictly liable for damage to Plaintiff's property  
23 caused by their wrongful diversion of water.



1 **Count VIII**

2 **(Permanent Injunction)**

3 58. Plaintiff re-alleges all allegations contained in previous paragraphs, and  
4 incorporates them by reference.

5 59. The AWD Defendants' wrongful alterations to the watercourse proximately  
6 caused flooding to and erosion of Plaintiff's property, including to the Stock Pond.

7 60. Plaintiffs put the AWD Defendants on notice of the damage to Plaintiffs'  
8 property caused by the AWD Defendants' wrongful alterations proximately caused to the  
9 watercourse.

10 61. Notwithstanding their knowledge of the damage their alterations to the  
11 watercourse created, the AWD Defendants intentionally failed and wrongfully refused to  
12 redress the problem, continue to flood, erode, and otherwise damage Plaintiff's property, and  
13 continue to diminish Plaintiff's use and enjoyment of the Property and lawfully-appropriated  
14 water rights.

15 62. Parsons has suffered damages and continues to do so on an ongoing basis as a  
16 direct and proximate result of the AWD Defendants' unlawful diversion and appropriation  
17 of Parsons' water.

18 63. The Court is empowered to issue an Order imposing an immediate and  
19 mandatory permanent injunction enjoining the AWD Defendants from appropriating further  
20 water from Plaintiff and requiring the AWD Defendants to restore the watercourse upstream  
21 of the Stock Pond to ensure that it ceases to cause damage to Plaintiff's property and the  
22 Stock Pond. Plaintiffs are entitled to such an Order.

23 **Count IX**

24 **(Private Nuisance)**

25 64. Plaintiff re-alleges all allegations contained in previous paragraphs, and  
26 incorporates them by reference.

1           65.    The AWD Defendants' have unreasonably interfered with Plaintiff's use and  
2 enjoyment of the Property, causing significant harm to Plaintiff.

3           66.    The AWD Defendants' interference of Plaintiff's use of the Property has at all  
4 times been and is now substantial, intentional, and unreasonable under the circumstances.

5           67.    The AWD Defendants' interference of Plaintiff's use of the Property has at all  
6 times been and is now sufficiently special in nature and different in kind from that  
7 experienced by others near or around the altered watercourse.

8           68.    The AWD Defendants' actions described herein constitute a private nuisance  
9 to Plaintiff's use of the Property.

10          69.    The Parsons have suffered damages, and continue to do so on an ongoing  
11 basis, as a direct and proximate result of the private nuisance committed by the AWD  
12 Defendants.

13  
14          **WHEREFORE**, Plaintiff prays that the Court enter judgment and enter an Order as  
15 follows:

16          1.     Quieting title in the property interests and rights described in the Deed of  
17 Easement and Sales Agreement; namely, Plaintiff's rights of ingress and egress to Plaintiff's  
18 aforementioned 20-acre parcel (with Stock Pond #3R-763.0) along the roads and trails in  
19 Sections 20 and 30 as shown on Exhibit 1 to the Supplemental Affidavit of Joseph Parsons  
20 filed with this Court on August 1, 2008, incorporated herein by this reference, for the  
21 movement of livestock (i.e, cattle), horses, ranching machinery and vehicles, and for general  
22 ranching activities of plaintiff, and quieting title in that easement forever against any and all  
23 claims of defendants, their agents, employees, successors or other persons in accord with the  
24 partial summary judgment previously granted by this Court in Parsons' favor;

25          2.     [Prayer for relief 2 omitted from this Second Amended Complaint.]  
26

1           3.     Requiring Defendants AWD and Desert Plants to show cause why the Court  
2 should not issue a mandatory permanent injunction, and to remove all fences, barriers,  
3 affecting Plaintiff's free and clear use and enjoyment of its property rights and Easement;  
4 obstructions, hindrances, etc. from the subject land affecting ;

5           4.     Granting a mandatory permanent injunction against Defendants AWD and  
6 Desert Plants enjoining said Defendants from further obstructing or causing to be obstructed,  
7 Plaintiff's rights under the Easement, Deed of Easement, Sales Agreement and principles of  
8 easement by necessity and/or by implication; further, to cease all activities in violation of  
9 Plaintiff's Easement and property rights, and to remove all fences, barriers, obstructions,  
10 hindrances, etc., from the subject land affecting Plaintiff's free, clear and intended use and  
11 enjoyment of its property rights in the Easement;

12           5.     [Prayers for relief 5-7 omitted from this Second Amended Complaint.]

13           8.     Granting Plaintiff its special and general compensatory damages;

14           9.     Granting Plaintiff its consequential damages, including, but not limited to, the  
15 income and benefits lost due to Plaintiff's inability to herd cattle to and from the Property  
16 and inability to conduct other ranching activities on Plaintiff's property;

17           10.    Granting Plaintiff its costs and fees allowed by law incurred in this matter;

18           11.    Granting Plaintiff its attorney fees;

19           12.    Granting Plaintiff punitive and/or exemplary damages;

20           13.    Ordering the AWD Defendants to abate the private nuisance they have caused  
21 by returning the watercourse upstream of the Stock Pond to its prior configuration such that  
22 water flowing from the watercourse does not damage, erode, or flood Plaintiff's property;

23           14.    Finding that Plaintiff has a better water right than the AWD Defendants to the  
24 water running through all watercourses upstream of the Stock Pond;

25           15.    Ordering the AWD Defendants to cease appropriating water from Plaintiff in  
26 accord with Plaintiff's better and superior water right and that the AWD Defendants

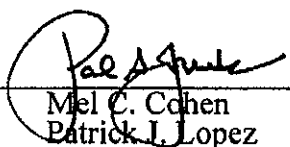
1 peaceably release any and all impounded water upstream of the Stock Pond necessary to  
2 return the Stock Pond to its level before their unlawful appropriation of Plaintiff's water;  
3 and

4 16. Granting Plaintiff any other relief in law and equity as the Court deems just.

5 DATED: September 18, 2008.

6 MESCH, CLARK & ROTHSCHILD, P.C.

7  
8 By

  
\_\_\_\_\_  
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Paul A. Loucks  
Attorneys for Plaintiff

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14 Copy of the foregoing mailed  
15 September 18, 2008, to:

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1 COPY of the foregoing served by  
2 facsimile this 18th day of September, 2008,  
3 to:

3 Hon. Robert Carter Olson - Fax #520-866-5414  
4 Pinal County Superior Court  
5 P.O. Box 946  
6 Florence, AZ 85232

7 278044v2